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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,227	12/19/2001	Yehuda Yamay	2786-0186P	2035

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EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/14/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/914,227

Applicant(s)

YAMAY, YEHUDA

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 12 February 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Israel on November 02, 1999. It is noted, however, that applicant has not filed a certified copy of the Israel 132708 application as required by 35 U.S.C. 119(b).

### ***Claim Objections***

2. Claims 1, 7 and 13 are objected to because of the following informalities:

Claim 1, line 12: "being -formed" should be changed to: --being formed--.

Claim 7, line 10: "brining" should be changed to: --bringing--.

Claim 13, line 2: "filmmade" should be changed to: --film made--.

Appropriate correction is required.

### ***Drawings***

3. The proposed drawing correction, filed on February 12, 2003 has been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6, 11, 14, 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1, lines 18-19: "said closure-forming member" lacks proper antecedent basis.

Claim 11, line 4: "the confined space a seal space" is confusing.

Claim 12, lines 1-3: "said sealing mechanism is capable to bring said closure-forming membrane into sealing engagement with the rim" is indefinite for it is unclear whether or not the sealing mechanism actually bring the closure-forming membrane into sealing engagement with the rim.

Claim 14, line 2: "the film" lacks proper antecedent basis.

Claim 15, lines 3-4: "into confined space a bottom surface" is confusing.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by EP'372 (EP 0214372).

EP'372 discloses a method for packaging a product in a hermetically sealed container including the steps of: filling the packaging container (1); forming a confined space having a gas inlet (18) and a gas outlet (14), wherein the spaced is defined by the packaging container (1), the ring (15) and the lid (2); introducing a protective gas through the gas inlet (18) into the confined space and flushing out the air through the gas outlet (14); displacing the lid (2) relative to the packaging container (1); and sealing the lid (2) to the packaging container (1) by the supply of heat (abstract).

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP'372 (EP 0214372) in view of Grune et al. (US 5,071,667).

The method of EP'372 meets all of applicant's claimed subject matter but lacks the specific teaching of the product being a pasty material and the closure-forming membrane comprising a plastic film.

However, Grune teaches that pasty material such as milk-containing product is gas-treated to promote expulsion of air from the container prior to the final sealing step in order to prolong storage life of the product (column 2, lines 22-42).

Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of Noel et al. by having pasty material as the product to be gas treated, as taught by Grune et al., in order to prolong storage life of the pasty material.

Note that Grune also discloses a closure (44) made of plastic foils. Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of EP'372 by having used plastic foils as the lid material, as taught by Grune, so that the lid could be heat sealed to the container.

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10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP'372 (EP 0214372) in view of Noel et al. (US 5,718,101).

The method of EP'372 meets all of applicant's claimed subject matter but lacks the specific teaching of the confined space being brought into communication with a vacuum means.

However, Noel discloses a method of gas treating food products wherein the treating gas is filled into a chamber via gas inlets (58) and evacuated via vacuum port (56).

Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of EP'372 by having provided a vacuum means in communication with the confined space, as taught by Noel, in order to evacuate the gas in the confined space.

11. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO'400 (WO 91/03400).

WO'400 discloses an apparatus for forming a hermetically sealed container including: a holder (21) having an axially projecting skirt for holding a container (3) having flange (9); a spacer (65) having an opening engageable with a lid-forming film (5) for defining a confined space between the container (3), the spacer (65) and the lid-forming film (5); a means (89) for bringing the spacer (65) into sealing engagement against the lid-forming film (5) and the holder (21); a gas inlet (97) formed on the spacer (65) and a gas outlet (93); an axially displaceable heat sealing mechanism (103) for displacing the lid-forming film (5) toward the container (3) through the opening of the spacer (65) and attaching the lid-forming film to the flange (9) of the container (3) to form a gas-tight seal; a vacuum forming cup (81) sealingly engageable with the

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bottom surface of the holder (21); and an axially displaceable trimming member (133) for trimming the lid-forming film (5) around the flange (9) of the container (3).

Regarding the recitation of the container not being filled entirely by the product in the preamble of the claim, it has been given little patentable weight since the container (3) used in the apparatus of WO'400 is capable of receiving a product less than the container volume, and the volume, shape and/or type of the product to be packaged is obvious as a matter of choice and thus does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

Regarding the limitation of the lid-forming film being gas-impermeable membrane, it would have been obvious to an ordinary skilled person in the art to have used gas-impermeable material for the lid forming film as a matter of choice depending on the type of product to be packaged, and since the apparatus of WO'400 is capable of utilizing such material as the lid forming film and thus does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

### ***Response to Arguments***

12. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments filed February 12, 2003 (Paper No. 8) with respect to claim 7 have been fully considered but they are not persuasive.

With respect to claim 7, applicant contends that the flexible web used in the apparatus of WO'400 is gas-permeable material and there is no space between the web and the container since the web is in contact with the product contained in the container, and that the apparatus of

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the present invention is not intended for rendering red color to meat by virtue of exposure to high oxygen gas. This is not found persuasive because the apparatus of WO'400 is capable of using gas-impermeable film material as the flexible web for forming the closure, is capable of packaging product other than meat having less volume than the container, and is capable of receiving gases for treating other products different than meat and thus the type of product and the material of the lid forming film do not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

### ***Conclusion***

14. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on December 03, 2002 prompted the new ground(s) of rejection presented in this Office action. Furthermore, applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i) and § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



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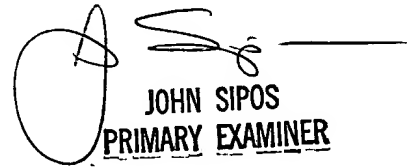
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694.

The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

LH  
April 9, 2003



JOHN SIPOS  
PRIMARY EXAMINER